

**AUG 30 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TINA COTE,

Defendant - Appellant.

No. 05-30519

D.C. No. CR-05-00010-DWM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Argued and Submitted July 25, 2006  
Portland, Oregon

Before: REINHARDT and GRABER, Circuit Judges, and LEW,<sup>\*\*</sup> District Judge.

Defendant Tina Cote pleaded guilty to one count of embezzlement from an Indian tribal organization in violation of 18 U.S.C. § 1163. The district court sentenced her to 10 months in prison.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Ronald S.W. Lew, United States District Judge for the Central District of California, sitting by designation.

1. Defendant first argues that the district court should have dismissed the indictment because the tribe was not a victim of her embezzlement scheme. We review that claim de novo. United States v. Fitzgerald, 147 F.3d 1101, 1102 (9th Cir. 1998).

Defendant's jurisdictional argument is factual in nature; it calls into question, for example, whether the tribe continued to have an interest in the money and whether it had a risk of loss. But Defendant foreclosed factual challenges to the district court's jurisdiction through her plea agreement, including her admission that the monies embezzled were those of the tribe. See United States v. Broce, 488 U.S. 563, 569 (1989) (holding that a guilty plea confesses "all of the factual and legal elements necessary to sustain a binding, final judgment of guilt and a lawful sentence").

2. Defendant also challenges her sentence. She argues that the district court erred in basing her sentence on the intended loss to the tribe, rather than on the tribe's actual loss. That argument is foreclosed by United States v. McCormac, 309 F.3d 623, 627-28 (9th Cir. 2002): "[W]hen the defendant fraudulently obtains a loan and does not intend to repay any part of the loan, the offense level is based on the gross amount of the loan, irrespective of whether the victim was able to recoup part of the loss. . . ."

AFFIRMED.